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INVERNESS. SS.

DONALD McDONALD, Plaintiff.

AND

DUNCAN CAMPBELL et al, Defend'ts.

H. H. BLIGH,

Counsel for Plaintiff

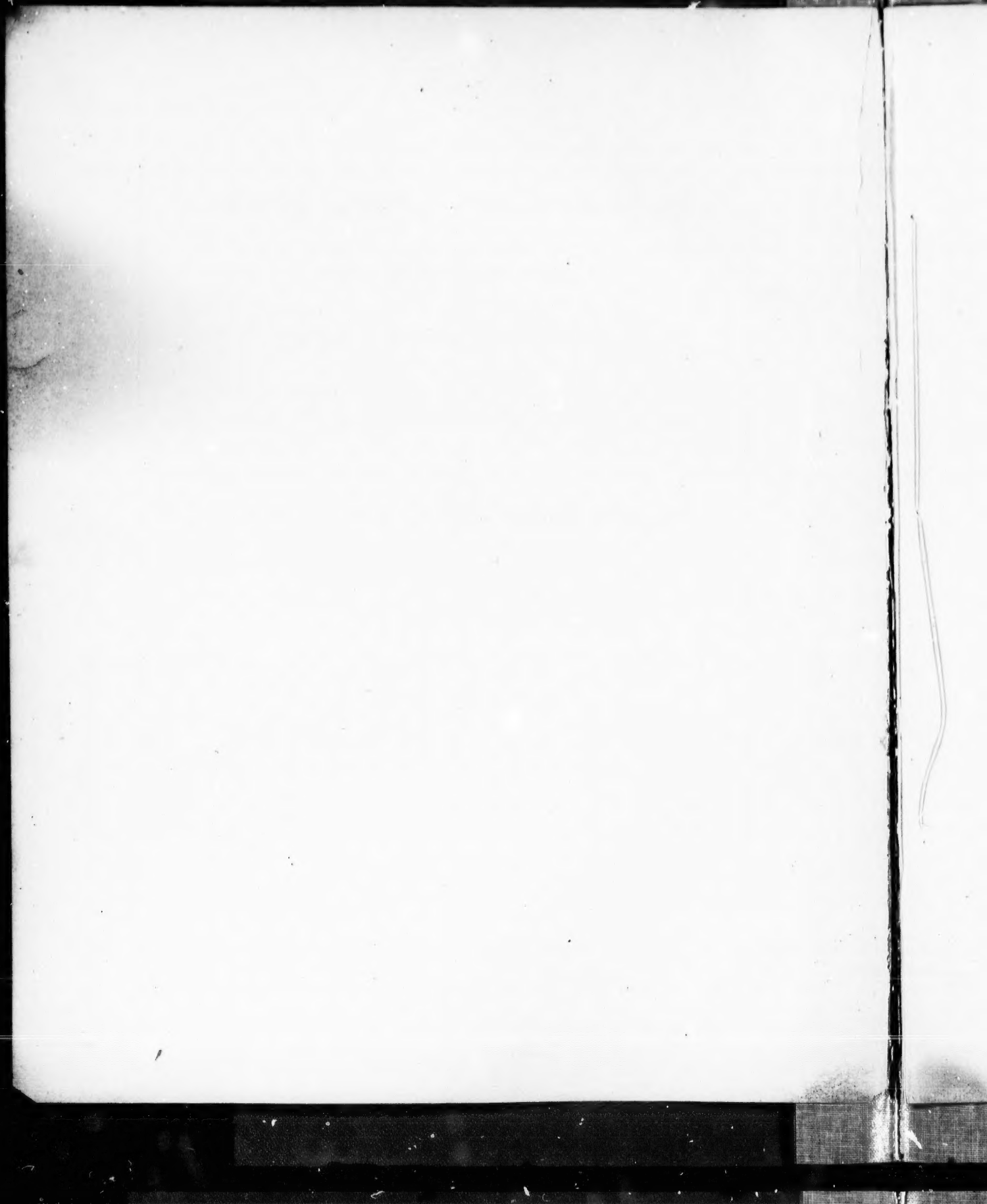
N. H. MEAGHER,

Counsel for Defendants.

HALIFAX, N. S.

Wm. MacNAB, STEAM JOB PRINTER, PRINCE ST.

1881.



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INDEX.

	PAGE
Declaration.....	3
Pleas.....	4
Minutes of Trial.....	5
Plan of Property.....	8
Rule Nisi.....	9

INDEX

1	Introduction
2	1. The first part of the book
3	2. The second part of the book
4	3. The third part of the book
5	4. The fourth part of the book
6	5. The fifth part of the book

DECLARATION.

INVERNESS, SS.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, and of the Church of England on earth the Supreme Head.

To the Sheriff of the County of Inverness, or to any other of our Sheriffs:—

We command you to summon Duncan Campbell and Farquhar M. Fadegan, both of the north side of the Little Narrows, in the County of Inverness, Farmers, to appear in the Supreme Court at Port Hood, within ten days after the service of this writ, at the suit of Donald McDonald, who says that the said defendants broke and entered certain lands of the plaintiff, situate on the road leading from Little Narrows to the head of Lake Ainslie, beginning on the eastern side of a brook running into Whycocomagh Bay, and forming the eastern boundry of lands occupied by Murdoch McLeod, Angus McAuley and others; thence running by the magnet north sixty-nine degrees east, by the southern line of one hundred and seventy-one acres occupied by John Matheson, sixty-one chains and fifty links; thence south seventy-one degrees east thirty-three chains and fifty links; thence south sixty-nine degrees west sixty-three chains to the brook; thence northwesterly by the brook to the place of commencement, containing two hundred and six acres, more or less, and cut, carried away and destroyed large quantities of timber trees, poles and wood. 10 20

2. And also that the said defendants broke and entered certain lands of the plaintiff, situated on the road leading from the Little Narrows to the head of Lake Ainslie, bounded as follows:—On the west by the brook running into Whycocomagh Bay, and forming the eastern boundary of lands occupied by Murdoch McLeod, Angus McAuley and others; on the north by lands occupied by John Matheson; on the east by Crown lands, and on the south by Crown lands, containing two hundred and six acres, more or less, and depastured the same with cattle; and the said defendants, by themselves and their servants and with horses and vehicles, dug up, ploughed, cut and destroyed the said land, and the trees, herbage and grass growing thereon, and destroyed the fences and gates erected thereon, to the great damage and loss of the plaintiff. 30

3. And also that the said defendants cut, took, carried away, and converted to their own use the plaintiff's goods and chattels, to wit: one hundred poles, nine hundred logs, nine hundred fir trees, nine hundred spruce trees, and one hundred cords of wood.

And the plaintiff claims one thousand dollars damages.

Issued August the 1st, A. D., 1879.

JNO. A. McDONALD,
Plaintiff's Atty.

JAMES McDONALD,
Proth'y.

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PLEAS.

1. The defendants, by Samuel McDonnell, their attorney, for a plea say that they did not commit the several trespasses complained of by the plaintiff, nor any or either of them.

2. And for a second plea, the defendants say that the said lands were not at the time of the committing the said several trespasses, the lands and soil or the property of the plaintiff.

3. And for a third plea, the defendants say that at the time of committing the said several trespasses the said lands and premises were not in the possession of the plaintiff.

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4. And for a fourth plea, the defendants say that they did what is complained of by the leave and license of the plaintiff.

5. The defendants, by Samuel McDonnell, their attorney, for a fifth and added plea, say as to the third count of the plaintiff's declaration, that the said goods and chattels were not, nor were any or either of them, the plaintiff's, as alleged.

SAMUEL McDONNELL,
Defendants Attorney.

And the plaintiff joins issue, wherefore let a jury come, &c.



MINUTES OF TRIAL.

McDONALD v. CAMPBELL.

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THURSDAY, 17th June, 1880.

J. A. McDonald opens.

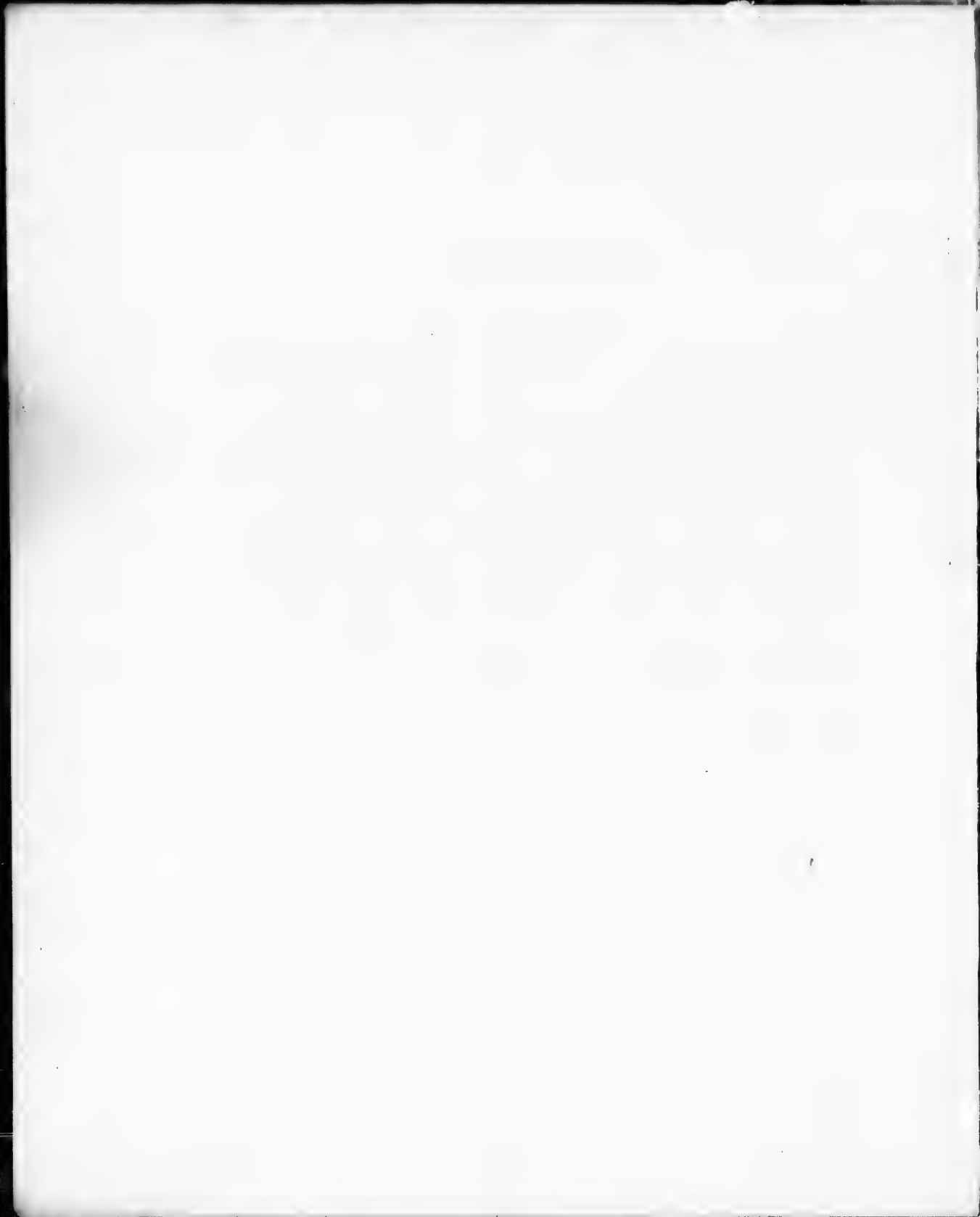
Donald McDonald, plaintiff: Have land on Lewes' Mountain, on third range, 1½ miles from shore. Have held it since 1843—thirty-seven years. McLean came from the old country. He, my uncle and myself, we measured the breadth of the lot on the shore which had been surveyed to get the breadth; put a stake on the middle of McLean's lot (now John Matheson's). We measured the breadth of 100 acres each side of the stake, so as to make a two hundred acre lot. Then we ran Norman Matheson's (the father of John and Norman, marked on plan); then we came inside of McLean's to run one hundred acres for myself. McLean's lot is the one marked John Matheson, who bought from McLean's widow. We ran across from McLean's and marked off two hundred for me. McLean and I laid a line between ourselves. Where we measured off was not very far above where road is now. Our western boundary was the river or brook. We ran the side lines square with the brook. I put a stake at end of line to mark southern boundary. It was Crown land on the south and east; not on the west. On the west the land was in possession of others. We all held our lands as we laid them out. We had a surveyor in 1868. He made alteration in boundaries. The surveyor was Francis McKenzie. He was County Surveyor. He gave me all I held before, and made the lots wider and shortened them. I agreed that he should do it. He did the same with all the lands in the block. I made the first clearing at the river, alongside of the line. This was the first summer—1843. The next was next McLean. I fenced, cultivated, and sowed it, (marked 2.) I planted first, then sowed it, and then let it out to pasture. This was the next year after the first clearing—1844. The next clearing (No. 3) was at the road joining McLean, near north line. I cleared about three acres there, and fenced it all, planted and sowed it all. The first clearing was about a half acre, (01.) The second (02) one acre, the third (03) three acres; the fourth was in S. W. corner of the line and road (04.) I cleared 2½ or three acres; I planted and sowed there too. There are some seven or eight acres or more cleared, beside these four clearings; one McLeod made the last-mentioned clearing. Hemeon McLeod was there. He commenced clearing inside of my land. I told him he was on my land. He said: "If I am on your land when I find that out I will clear out and leave it." He was just commencing. I consented to that and left him alone. He was ten or twelve years on the place. I showed him he was on my land. He left over twenty years ago. I showed him he was on my land when he commenced. McCauley lived on it and made one clearing afterwards. I told him he was on my land. He said he did not expect to live there only a short time. I suppose he was there two winters, when he went away. One McLean cut lumber on it. He and I settled about it. McLeod told me at last he was sure he was on my land. I never saw defendants inside my old or new bounds. I made improvements on it after McKenzie surveyed. I cleared between two and three acres since, and fenced it.

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McDonald tenders a receipt for five dollars from the Treasurer's office for five dollars received from Donald McDonald, deposited for Crown lands in the County of Inverness, 24th January, 1878.

McDonnell, Q. C., objects. I sustain objection.

Witness—This is the only land I paid money to the Treasury on account of. I claim the land and the wood on it. I saw defendants hauling away from the place they had piled. They hauled away 63 trees. They were not piled on my land. They were outside of the line. I traced where they had come from by the trail. They had hauled the whole trees, tops and all. They came from the land I was claiming. They were mine first. They were cutting them up and hauling them 110 away. This was in the winter of 1878,—the winter before action was brought.

Cross-examined by Mr. McDonnell :—All the shore was settled when I came out. The 1st and 2nd divisions were settled. The nearest settler was a $\frac{1}{4}$ mile distant,—one McLeod, who left in 1852; my first clearing, $\frac{1}{2}$ acre, is grown up with wood. It has been growing up since 1845. The second clearing is covered with second growth. It may have been growing since 1846. Some of the third clearing is second growth, and some in pasture; one crop of potatoes and one crop of oats. Never took a crop off since. It has not been fenced since I made clearing No. 4. I took three crops out of it; the last about five years ago. I made the clearing six or seven years ago. Took no crops since. I fenced it last at the last crop. I have kept the fence up since 120 for my cattle. I have no cattle of my own. I live about a mile and three-quarters distant. I never lived on the lot. I am a married man. I live with my father. McLeod did not ask leave of me. I don't know how McLeod left it. There was a bargain between me and McLeod when he went there. He left over 20 years ago. The house he lived in was rotted away.

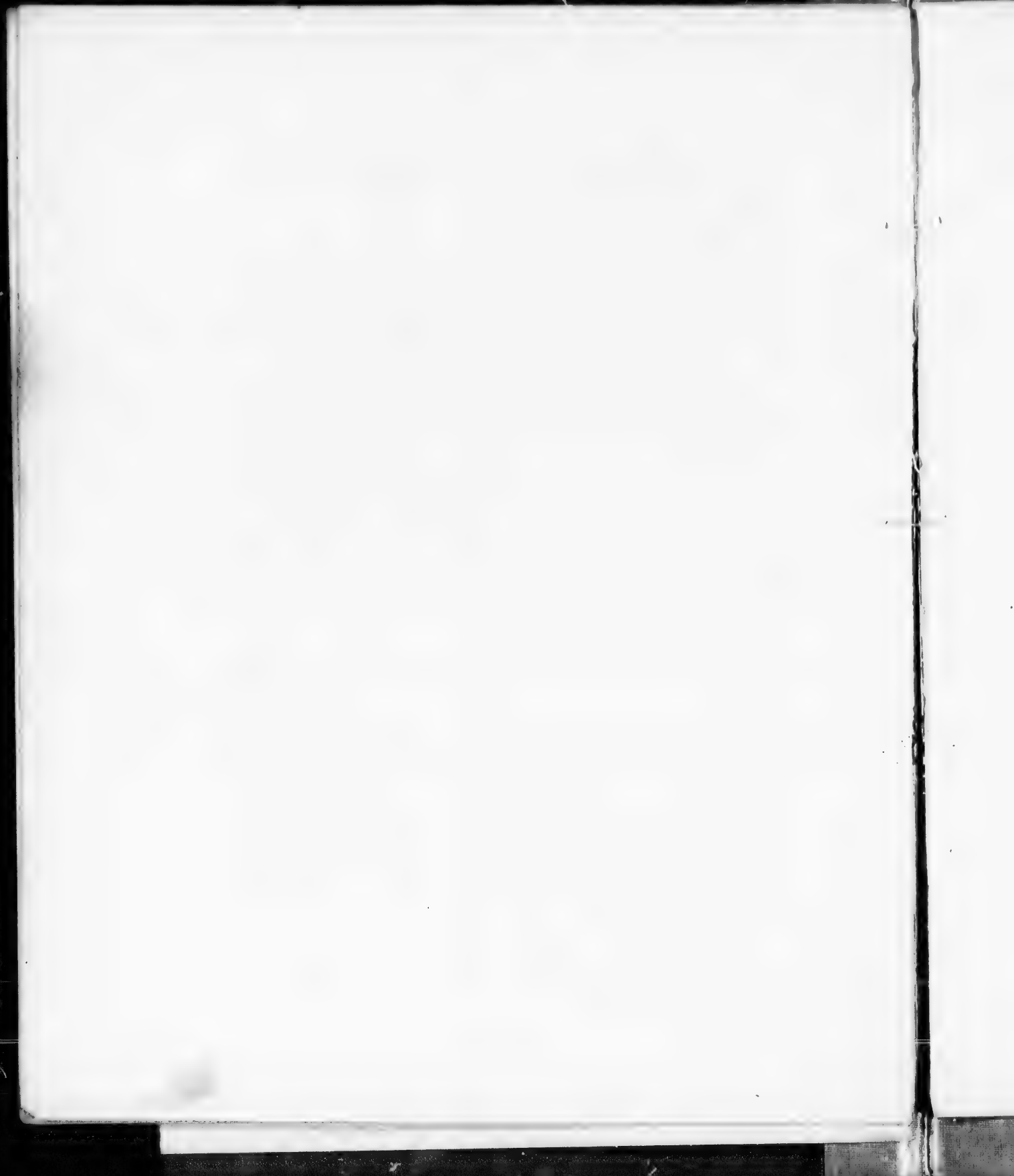
Mr. McDonnell admits that the defendants cut trees within the bounds described in the writ in the winter of 1878, but on forest land which had never been cleared or cultivated.

James H. Austen sworn :—This receipt is signed by Mr. Jean, Cashier's Department of Provincial Treasury. I think this money came first to the Crown Land 130 Department, and we handed it to the Treasury. It was paid for Crown lands. Sometimes the money is sent with a letter without a petition, and we prepare a petition. I have no doubt this was accompanied by a letter or petition. This is my writing to letters to plaintiff, dated 7th February, 1878. I am chief clerk in the Crown Land Department. This letter is from me. I usually reply to a letter addressed to the office. I think Mr. White was Commissioner then. Where there is any difficulty, as in this case, I usually consult the Attorney-General. Mr. White was then Attorney-General. I am not positive if I consulted him about it, as he was sometimes in C. B., and then I answered the letter on my own judgment.

Tenders letter, (objected.) I sustain objection.

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Plaintiff recalled to prove value :—I would not give the trees less than \$1.00 each, standing. There were 98.



Cross-examined :—There were large trees. There were fir not spruce. At 15 feet long they would be 8 inches through, and would square 5 inches. There are a great many on yet. There might be 300 or 400 more on the lot. I won't swear I could get £25 for it all at auction ; with good title would rather keep it than sell for that. A great deal of hard wood on it.

Plaintiff rests.

Mr. McDonnell moves for non-suit.

1. No title.
2. No possession.
3. Possession proved insufficient.
4. No proof of authority of surveyor.

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J. A. McDonald claims to be entitled to a verdict on 2nd count.

1. Because plaintiff has a constructive possession of the whole lot, and trespass admitted to be within the boundaries.

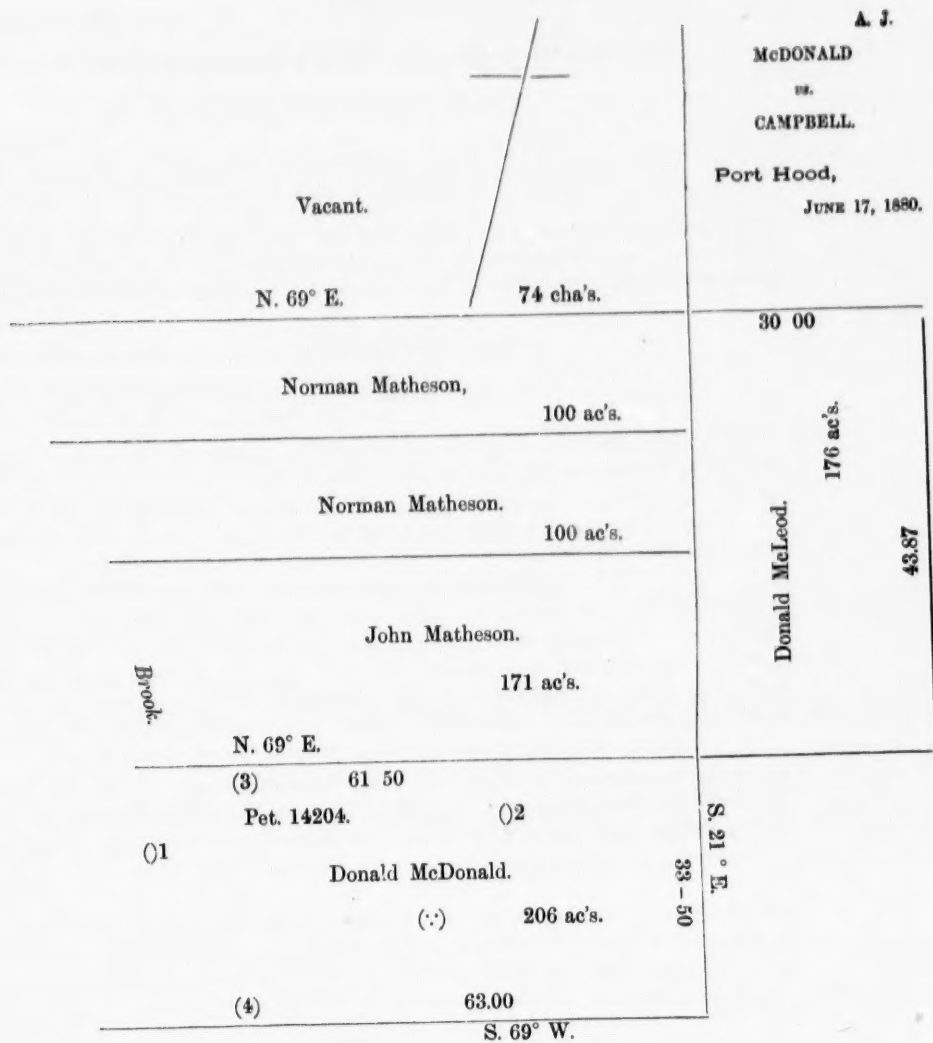
2. On 1st count, on the ground that the lines fixed by the County Surveyor, ten years before trespass, gave sufficient possession to maintain trespass, as it amounted to a barren license from the Crown.

3. No plea denying property in the wood, under 1st or 2nd counts. The land 160 may belong to me and the wood to another, and the property alleged in 1st and 2nd counts in the wood should have been traversed, as was done in relation to the 3rd count.

4. That the possession proved is sufficient, as against a wrong-doer.

I direct a non-suit.

PLAN OF PROPERTY.



Scale 20 cha's to an inch.

Logg.
Road.

Y. 1000. 10. 12. 13

RULE NISI.

INVERNESS, SS.

IN THE SUPREME COURT AT PORT HOOD, 1880.

DONALD McDONALD, *Plaintiff*.

vs.

DUNCAN CAMPBELL and
FARQUHAR M. FADEGAN, } *Defendants*.

170

Upon reading the Judge's minutes taken at the trial hereof, and the other papers put in evidence at the said trial, and the pleadings herein, and upon motion it is ordered that the non-suit granted herein be set aside, with costs, upon the following grounds:—

1. That the said non-suit is against law and evidence.
2. The improper rejection of evidence.
3. The improper reception of evidence.

4. Because the defendants in their pleadings do not deny the plaintiff's property 180 in the timber trees and poles mentioned in and claimed by the plaintiff in the first count of this declaration; and because the said pleadings of the defendants do not operate as a denial of the plaintiff's property therein, and inasmuch as the same is not denied, and the defendants having admitted the taking, cutting, and destruction of the said property by them, the verdict should be for the plaintiff.

5. Because the defendants, by their attorney, having acknowledged on the trial that the defendants cut, carried away and destroyed the said timber trees and poles and wood, and that the same were taken from off the lands claimed by plaintiff, and described in the first and second counts of his declaration, and of which land he gave evidence of possession; the verdict should have been for the plaintiff, as 190 against the defendants, being mere wrong-doers, entering without any right or title.

6. Because the plaintiff was proved to have been in possession of the lot by metes and bounds, from which the said timber trees and poles were cut, taken and destroyed at the time of the trespass, and had good title and right against the defendants, who were wrong-doers, and proved neither right, title, nor possession in themselves.

Unless cause to the contrary be shown within the first four days of the ensuing term of the Supreme Court, in *banco*, at Halifax, and that the plaintiff have twenty-two days to file sufficient bail under the Statute in the sum of one hundred and sixty dollars, to respond the judgment to be finally given in this cause, and to give 200 notice thereof.

By the Court.

JAMES McDONALD,
Prothonotary.

On motion of
MR. GILLIS, }
P. *Plaintiff*.

Dated at PORT HOOD, June 18, 1880.